

## OIL FUND DISBURSEMENT BOARD

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### POLICY STATEMENTS

#### **1. ) PETROLEUM FUND REIMBURSEMENTS TO TRANSFEEE OWNERS – Revised January 22, 2001 (original March 29, 1999)**

The Oil Fund Disbursement Board (Board) will apply the following policy in reviewing requests for reimbursement for corrective action costs under the transferee owner provisions of RSA 146-D, E, and F:

If the owner of a petroleum storage facility initiates corrective action or otherwise incurs cleanup costs pursuant to an agreement with a prospective transferee owner, but does not file reimbursement requests with the Board, the Board will deem petroleum fund coverage to have been triggered for purposes of the transferee owner provisions at RSA 146-D:6, I and I-a., RSA 146-E:6, VII and RSA 146-F:5, VIII. Persons who subsequently take title to the contaminated property or facility, and continue corrective action, will qualify as an owner for purposes of reimbursement for corrective action costs and third-party damage costs. If the owner of a permanently closed facility did not initiate corrective action or otherwise incur cleanup costs pursuant to an agreement with a prospective transferee owner, then the transferee owner cannot independently qualify for reimbursement.

The transferee owner shall file written notice with the Board including the name of the transferee, mailing address, telephone number, the effective date of the transfer of title, and a copy of the property deed. Where facility registration and corrective action permits recorded with the Department of Environmental Services (DES) are applicable, the transferee owner shall also file an amended facility registration form and request for permit modification with DES, with a copy to the Board.

The Board will determine the fund deductible to be applied based on the number of facilities owned by the transferee owner when an initial reimbursement request is submitted. The transferee owner shall comply with co-insurance requirements and all other provisions of the applicable statute and Board rules - reference N.H. Administrative Rule Odb 401.

#### **2.) DELEGATION OF CERTAIN AUTHORITY TO NHDES – Revised May 20, 2002 (original November 29, 1999)**

##### Item 1.

The Oil Fund Disbursement Board (Board) hereby authorizes the Department of Environmental Services (DES) to pay uncontested Odb 401, and uncontested Odb 601 first-party reimbursement claims, that meet all of the Board regulatory criteria under the following circumstances:

- (a) The total amount of the claim does not exceed \$50,000;
- (b) DES approved a work scope and associated budget prior to the start of work;

- (c) If an approved budget was exceeded, the applicant has provided a written justification that explains the need for the additional work, details the incremental costs of the additional work and provides an explanation of how the additional work was consistent with the scope of the original approved budget;
- (d) The claim does not involve a waiver of Odb 100-600 except as authorized by the Board; and
- (e) An appeal of previous Board or DES decisions associated with the claim is not being sought.

The Board or the Board Reimbursement Subcommittee (Subcommittee) must approve all other claims. DES shall determine the amount of reimbursement based on the first-party eligible cost criteria of Odb 401, or the criteria of Odb 601, as applicable. DES shall submit a monthly report to the Board and the Subcommittee listing all claims approved by DES during the previous month. DES shall consult with the Subcommittee on any sites involving multiple projects/releases, where there are significant facility compliance issues, or where the corrective action circumstances are unusual. At its discretion, the Subcommittee shall review the tenth claim submitted for each corrective action project.

#### Item 2.

The Oil Fund Disbursement Board hereby authorizes the Department of Environmental Services to pay first-party reimbursement claims under Odb 401 and Odb 601, for the following classes of costs incurred based upon the total pre-approved budget for each class where the facility owner or applicant otherwise meets all applicable regulatory criteria:

- (a) Engineering and hydrogeologic services;
- (b) Laboratory services;
- (c) Drilling, well installation or subsurface exploration services;
- (d) Contaminated soil treatment, disposal, and restoration services;
- (e) Groundwater treatment and product recovery equipment, operation and maintenance services; and
- (f) Other services.

#### Item 3

The Oil Fund Disbursement Board hereby deems all requests for waiver of Odb 401.04(h)(1) relative to limits of fund availability to be granted, where:

- (a) The person or entity seeking fund eligibility is a qualified former owner of an active facility as provided by statute; and
- (b) The person or entity seeking fund eligibility demonstrates that it has a legal obligation under a property transfer agreement to continue corrective action after the facility is/was conveyed.

DES shall submit monthly reports to the Board listing all entities and payments that have been subject to a waiver of Odb 401.04(h)(1), approved by DES during the previous month.

#### Item 4.

The Oil Fund Disbursement Board hereby deems all requests for waiver of Odb 401.36(a)(7) relative to requirements for certified replacement fill weigh data to be granted, where:

- (a) The backfill material was obtained from a source other than the facility owner; and
- (b) The total cubic yardage and tons per cubic yard conversion factor data, or other equivalent measurement method data, are provided.

DES shall submit monthly reports to the Board listing all entities and payments that have been subject to a waiver of Odb 401.36(a)(7), approved by DES during the previous month.

**3.) REQUIREMENTS FOR ON-PREMISE-USE FACILITY RELEASE PREVENTION AND ELIGIBILITY FOR REIMBURSEMENT UNDER RSA 146-E - Effective January 10, 2000**

The Oil Fund Disbursement Board (Board) will apply the following policy to implement an on-premise-use facility (OPUF) release prevention program, and to determine whether OPUF owners qualify for reimbursement under RSA 146-E for costs incurred in performing release prevention work:

All owners of on-premise-use facilities shall take measures to bring their facility into compliance with the requirements of RSA 146-E:4 and Department of Environmental Services (DES) “Best Management Practices” for such facilities.

Certain owners of on-premise-use facilities with demonstrated financial need, shall be eligible for reimbursement of costs to comply with the requirements of RSA 146-E:4 and DES “Best Management Practices” for such facilities, to a maximum of \$1,000.00, subject to the following:

- (1) The on-premise-use facility must be substandard as set forth in the DES “Best Management Practices” guidance document, such that the present condition of the facility represents a risk for a release to occur;
- (2) The on-premise-use facility must be located at a property that is the primary residence of the facility owner. Such property may include a single-family home, a duplex, a manufactured home, a farm, or a property where the owner also operates a small business;
- (3) The owner must not hold title to, or have an interest in, any income producing property other than that specified in paragraph (2) above, including but not limited to, stocks or real property held either individually, or through a business, trust, or other related entity; and
- (4) The owners total household annual income must not exceed the current U.S. Department of Housing and Urban Development low-income guidelines that apply to the county or “metropolitan statistical area” where the property is located.

The Board shall prioritize the allocation of on-premise-use facility release prevention reimbursement funds based on the applicability of DES facility and environmental risk factors to each specific circumstance.

OPUF owners seeking qualification for reimbursement for release prevention work shall complete an application form and provide associated information and records. Upon successful completion and inspection of release prevention work, qualified owners shall submit copies of all contractor and subcontractor invoices when requesting payment.

**NOTE:** This policy is effective during the interim period until amendments to the Board administrative rules (i.e., N.H. Admin. Rules Chapters Odb 100-400) are adopted. It is anticipated that such rule amendments will require that compliance with DES “Best Management Practices” be achieved within 5 years of the effective date of the rule amendments, or within 6 months of notification that a substandard condition exists, whichever is earlier.

**4.) DELEGATION OF OPUF REIMBURSEMENT AUTHORITY TO NHDES – Effective March 24, 2000**

The Oil Fund Disbursement Board (Board) hereby authorizes the Department of Environmental Services (DES) to pay uncontested on-premise-use facility (OPUF) release prevention reimbursement claims under the following circumstances:

- (1) The facility owner and the OPUF meet the eligibility criteria specified in the Board's January 10, 2000, Policy Statement On Requirements For On-Premise-Use Facility Release Prevention and Eligibility For Reimbursement Under RSA 146-E;
- (2) The owner completed an application form and provided associated facility information, financial records and copies of all contractor and subcontractor invoices; and
- (3) DES performed an inspection of the release prevention work and certifies that the work conforms to OPUF Best Management Practices.

**5.) PRIORITIZATION OF REIMBURSEMENT CLAIMS APPROVAL – Effective June 26, 2000**

The Oil Fund Disbursement Board hereby authorizes the Department of Environmental Services to assign the following priority for review and approval of uncontested reimbursement claims, provided there are sufficient funds available in the applicable account to pay all pending claims. If sufficient funds are not available, then all claims shall be reviewed in the order received.

High Priority – Pay-for-Performance projects, and all corrective action projects where there is a significant risk to human health and the environment;

Medium Priority – Residential, and all other corrective action projects where there is a moderate risk to human health and the environment; or

Low Priority – Corrective action projects where the submitted costs are more than one year older than the date of the claim.

**6.) SUBSTANTIAL COMPLIANCE WITH PETROLEUM STORAGE FACILITY RULES – Effective November 25, 2002**

The Oil Fund Disbursement Board shall apply the following policy in determining facility compliance and owner eligibility under RSA 146-D, RSA 146-E and RSA 146-F, pursuant to N.H. Administrative Rule Odb 401:

Owners of underground storage or bulk storage facilities seeking eligibility for reimbursement shall allow inspection, provide documentation, provide compliance work schedules, or provide other information as determined by the Department of Environmental Services (DES) to demonstrate substantial compliance with the provisions of Env-Wm 1401 or Env-Wm 1402, as applicable. For purposes of petroleum fund eligibility, "substantial compliance" pursuant to Odb 401.05, shall mean achieving and maintaining compliance with the following provisions of DES storage facility rules:

<b><u>Env-Wm 1401</u></b>	<b><u>Env-Wm 1402</u></b>
Section .07 – Permit to Operate	Section .09 - Inventory Monitoring
Section .11 - Inventory Monitoring	Section .10 - Oil Transfers
Section .12 – Regulated Substance Transfer	Section .24 - Overfill Protection
Section .17 – Temporary Closure	Section .25 - Interstitial Leak Monitoring for New ASTs
Section .18 - Permanent Closure	Section .28 - Release Detection for AST Systems
Section .25 – Spill Containment & Overfill Protection	Section .29 - Inspection & Reporting Requirements for AST Systems
Section .26 – Leak Monitoring for New Tanks	Section .30 - Spill Prevention Control & Countermeasure Planning
Section .27 – Leak Monitoring for New Underground Piping Systems	Section .35 - Upgrading of AST Systems
Section .29 - Release Detection for Tanks Without Secondary Containment & Leak Monitoring	
Section .30 - Release Detection for Piping	
Section .31 - Operation of Leak Monitoring Equipment	
Section .32 - Corrosion Protection for Steel Tanks	
Section .33 - Corrosion Protection for Piping	

Any facility owner who achieves substantial compliance shall be eligible for reimbursement for an initial release at a facility, but shall not be eligible for reimbursement for a subsequent release if substantial compliance is not maintained, as set forth herein and on Exhibit A, titled “N.H. Petroleum Reimbursement Fund Program Facility Compliance (Eligibility) & Corrective Action Process.”